IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4108 OF 2005

Shri Tajuddin Gulab Kazi & Ors. : Petitioners

V/s.

Shri Abbas Gulab Kazi & Ors. : Respondents

...

Mr.K.B. Sonwalkar for the petitioners.

None present for the respondents.

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CORAM : S.A. BOBDE, J.

July 4, 2005.

P.C.:

1. The petitioners have challenged the refusal of the appellate Court in allowing the petitioners-defendants to amend their written statement.

2. According to the learned counsel for the petitioners, the only amendment the petitioners wanted to add was to the effect that they had acquired title to the land under section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as the "Act", and that there is a reference to that effect in an earlier suit, viz., Suit no.360 of 1982.

3. This itself has gone against the petitioners. Obviously, the petitioners were well aware of this fact resorted to be pleaded. Surely, they were acquiesced with the knowledge of the manner in which they acquired the title to the property, viz., under section 32G of the Act. Moreover, this fact appears to have been referred to in Civil Suit no.360 of 1982. In this view of the matter, I find no infirmity, jurisdictional or otherwise in the trial Court coming to the conclusion that in spite of due diligence, the party could not have raised the matter as required by the proviso to Order 6 rule 17 of the C.P.C.

4. In the circumstances, the petition is dismissed.

S.A. BOBDE, J.